

# Vermont Legislative Joint Fiscal Office

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## *FISCAL NOTE*

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### **S.54 An act relating to the regulation of cannabis – Senate Judiciary Recommendation Of Amendment; Senate Finance Committee Recommendations; and Senate Appropriations Committee Recommendation**

The bill proposes to tax and regulate the cultivation and sale of cannabis and cannabis containing products. The bill as recommended by Senate Judiciary establishes a Cannabis Control Board, a special fund for the board, and an excise tax at 10% with a local option tax at 2% on the retail sale of cannabis. The Senate Finance Committee recommends an excise tax rate of 16%.

#### **Cannabis Board Cost Estimate**

As recommended by Senate Judiciary the board would consist of five members that would be full-time state employees, in addition to an Executive Director, and an Executive Assistant. This recommendation proposes all five board members be paid a salary equivalent to 1/3 of a Superior Court Judge or approximately \$53,000 per year.

The Senate Appropriations Committee recommends an alternative board structure that consists of three members that would be full-time state employees, in addition to an Executive Director, and an Executive Assistant. This alternative proposes that the Board Chair salary be set at approximately \$105,000 per year and the salary of the two other board members be set at approximately \$80,000 per year.

The assumptions used in each cost estimate include: Executive Director salary at \$106,000; Executive Assistant salary at \$70,000; 40% benefit costs for full-time state employees; operating costs for space, IT, supplies etc. proportioned for the number of full-time state employees; an allowance for consulting costs that decline over the startup period; and capacity for General Counsel also declining over the startup period.

Based on the timeline of activities in the bill, the following chart provides two cost estimates to operate the Cannabis Control Board for 3 years.

<b>Cannabis Control Board Est</b>	<b>FY20</b>	<b>FY21</b>	<b>FY22</b>
Sen. Jud - 5 Member Board	\$860,000	\$1,010,000	\$940,000
Sen. Approps. - 3 Member Board	\$810,000	\$960,000	\$890,000

The bill requires the Board to report next year on recommended fees for the various licenses established in the bill. The Senate Appropriations amendment requires a minimum level for the fees similar to those of the Massachusetts Cannabis Control Commission. Based on this minimum level; actual MA fee collection experience to date; and the anticipated timeline of the

bill; JFO estimates fees would begin to be collected in FY21 and result in an annualized amount of \$650,000 once this regulatory regime is in full operation.

Given these estimates, the Board’s special fund could be in deficit between \$1.5m-\$1.7m by the end of FY22. To cover the appropriations by anticipating receipts in this special fund in FY20 and FY21, the Senate Appropriations amendments allow excise tax receipts to be allocated contingently to offset any fund deficit at the close of FY22. If fees are set at levels higher than this minimum and/or actual fee collections are similar to the Colorado experience or the level Massachusetts originally estimated than this offset amount may be lower or not needed. The amendments also require the Board to include in its report whether any ongoing allocation of excise tax receipts will be needed to balance the special fund, and the Auditor is asked to review and report on the structure of the Board after the startup period is completed.

Additional state expenses in the Departments of Tax and Agriculture will likely need to be considered in the FY21 or FY22 budget process. The scope of these needs will become clearer when the Cannabis Control Board provides its reports next year. At that time a funding source for these expenses will also need to be identified.

### **Cannabis Excise Tax Estimate**

The bill proposes a 16% excise tax on the retail sales of cannabis products with a 2% local option. JFO estimates that the 16% excise tax will generate the following additional revenues:

<b>16% Retail Excise Revenue</b>			
	<b>Year 1 (FY22)</b>	<b>Year 2 (FY23)</b>	<b>Year 3 (FY24)</b>
Low	\$3.8m	\$6.6m	\$8.6m
Mid	\$5.4m	\$9.3m	\$12.1m
High	\$7.4m	\$12.7m	\$16.6m

Estimates of excise tax revenues originate from a model developed by the Department of Taxes and the Joint Fiscal Office. The methodology for this model was heavily influenced by models used by the state of Colorado prior to their legalization of recreational cannabis sales in 2014. Those models estimated their first-year revenues within 1% of actual receipts<sup>1</sup>. The estimates were also cross referenced with actual data on cannabis receipts from other states including Oregon, Washington, Nevada, and Massachusetts.

The methodologies in this model were also reviewed by both the Legislative and Administration economists.

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<sup>1</sup> Colorado’s Legislative Council staff estimated \$67 million in revenue for FY2014-2015. See [https://newtax.files.wordpress.com/2014/02/revenue-estimate-for-aa-retail-marijuana-taxes\\_fn.pdf](https://newtax.files.wordpress.com/2014/02/revenue-estimate-for-aa-retail-marijuana-taxes_fn.pdf) Actual Revenues for FY2014 were \$67.5 million. See: <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>

These estimates are based on a variety of data sources, including:

- Estimates and forecasts of Vermont’s population from the Legislative Economist and the U.S. Census Bureau
- Estimates of Vermont’s medical marijuana user population, provided by the Public Service Department
- Estimates of the price of cannabis, provided by [www.priceofweed.com](http://www.priceofweed.com), where users report prices. This source was used by the state of Colorado during their estimation cannabis revenues in 2012.
- The Agency of Commerce and Community Development’s 2019 Tourism Benchmark Report<sup>2</sup>
- The National Survey on Drug Use and Health, which surveys individuals on cannabis usage in the past month<sup>3</sup>.
- Information on marijuana consumption in Colorado,<sup>4</sup> Oregon,<sup>5</sup> and Washington<sup>6</sup>
- Data on actual revenue collections from Colorado, Washington, Oregon, Nevada, and Massachusetts.

This estimate makes the following assumptions (sources found in footnotes 4,5 and 6):

- Average cannabis consumption by residents will be between 5 and 6 ounces per year. This was informed by usage rates in both Colorado and Washington.
- Cannabis prices will fall precipitously upon legalization.
  - Between 2014 and 2017, Colorado observed a 62 percent decline in average annual flower prices and a 48 percent decrease in concentrate prices.
  - Upon legalization, Oregon saw the average price per ounce of cannabis decrease from roughly \$275 per ounce to \$180 per ounce over the first year of legalization.
- 20% of the cannabis market will remain in the black market. Oregon has estimated that 15% of their cannabis market remains in the black market.
- 10% of total marijuana users will home grow and rarely use retail stores. Oregon estimates their home grow rate at 8%.
- While the percentage of Vermonters reporting cannabis use is one of the highest in the country, JFO assumes that overall consumption rates will be modestly lower due to an older population.

JFO’s estimates fall within the reasonable range of what other states have collected within their first 2 to 3 years of legalization. Figure 1 shows JFO’s estimate range compared to other states,

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<sup>2</sup> <https://accd.vermont.gov/sites/accdnew/files/documents/VDTM/BenchmarkStudy/VDTM-Research-2017BenchmarkStudyFullReport.pdf>

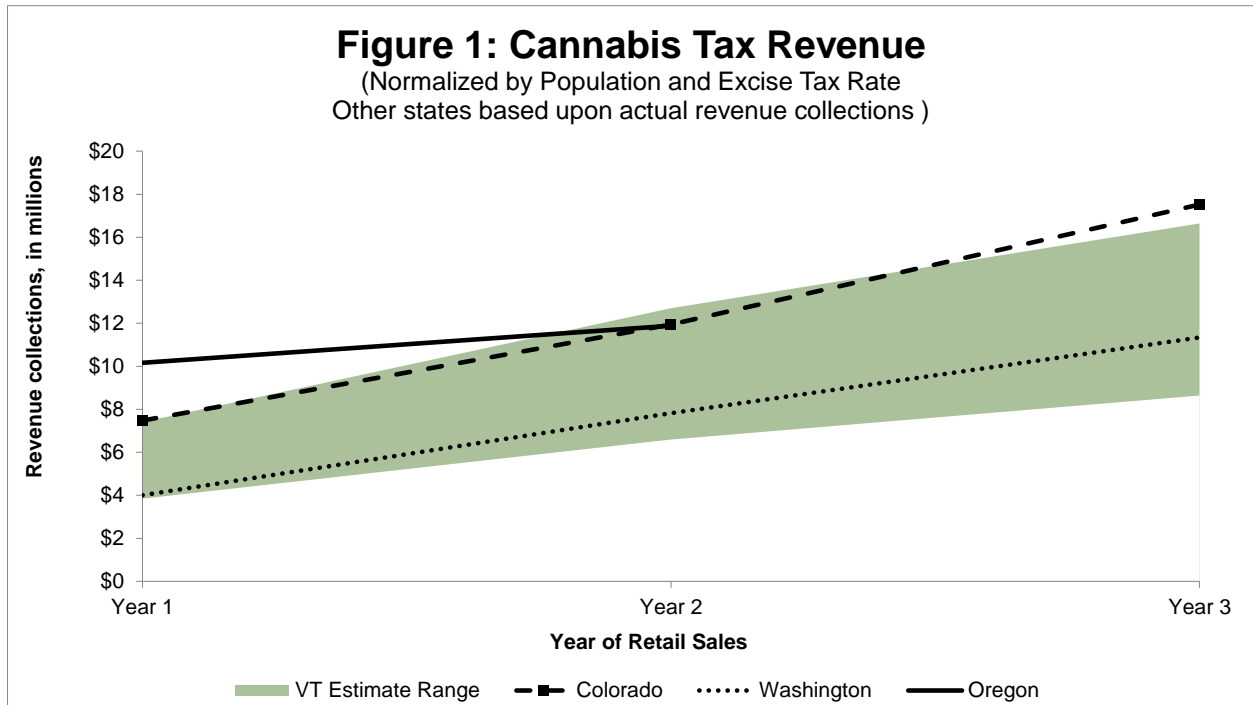
<sup>3</sup>“ 2016-2017 NSDUH State-Specific Tables.” Substance Abuse and Mental Health Services Administration (SAMHSA). <https://www.samhsa.gov/data/report/2016-2017-nsduh-state-specific-tables>

<sup>4</sup> Marijuana Policy Group and University of Colorado Boulder Leeds School of Business, “Market Size and Demand for Marijuana in Colorado 2017 Market Update” (Aug. 2018), available online: <https://www.colorado.gov/pacific/sites/default/files/MED%20Demand%20and%20Market%20%20Study%20%2082018.pdf>

<sup>5</sup> Oregon Legislative Revenue Office, Mazen Malik, “Legal Marijuana in Oregon Taxation and Revenue” (Oct. 11, 2018), NCSL Presentation. [http://www.ncsl.org/Portals/1/Documents/fiscal/Mazen\\_Malik.pdf](http://www.ncsl.org/Portals/1/Documents/fiscal/Mazen_Malik.pdf)

<sup>6</sup> Washington State Economic and Revenue Forecast Council. Steve Lerch. “Cannabis Forecasting in Washington State. NCSL Presentation. [http://www.ncsl.org/Portals/1/Documents/fiscal/Steve\\_Lerch.pdf](http://www.ncsl.org/Portals/1/Documents/fiscal/Steve_Lerch.pdf)

normalized to population and excise tax rates, based upon actual revenue collections. In other words, it shows what the other legal states would have collected in excise tax revenue if they had the same population as Vermont and the same 16% excise tax as being proposed in S.54.



Sources:

Colorado: <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>

Oregon: <https://www.oregon.gov/DOR/programs/gov-research/Pages/research-marijuana.aspx>

Washington: <https://dor.wa.gov/about/statistics-reports/recreational-and-medical-marijuana-taxes>